IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 276 OF 1994

Siddeshwar Bhimrao Dhobale
age about 46, resident of .. Appellant.
Mangalwedha, Dist.Solapur (Org.Accused)

V/s.

State of Maharashtra .. Respondent
(Org.Complainant)

Ms. Anjali Helekar i/by Mr. V.P. Navare for Appellant.
Mr. A.S.Shitole, APP for the State.

CORAM : A.S. AGUIAR,J
DATED : 01.09.2004 &
02.09.2004.

ORAL JUDGMENT :-

1. The Applicant accused challenges his conviction and sentence under sections 7 and 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988 by the Special Judge, Solapur in Special Case No.3/1991.

2. The Appellant was charged for the aforesaid offences on the allegations that during the months of June and July, 1990, while working as Talathi at Hajapur Sajja, Taluka - Mangalwedha, Dist. Solapur, being a public servant, attempted to obtain a sum of

Rs. 750/- on 22.06.1990 and on the same day, actually accepted Rs. 300/- and again on 21.07.1990 demanded Rs. 200/- and accepted Rs. 100/- on the same day and thereafter, on 25.07.1990 demanded Rs. 200/- and accepted Rs.100/- from the complainant -Ananda Rayappa Sable as illegal gratification other than legal remuneration for himself as reward for showing favour to the complainant in exercise of his power and in performing his official duties in favour of the said complainant to effect mutation entries in the revenue record and thereby committed offence under section 7 of the Prevention of Corruption Act and that during the said months of June and July, 1990, the Appellant allegedly obtained for himself pecuniary advantage of Rs. 500/- by way of corrupt or illegal means and or by abusing his position as a public servant and thereby committed offence punishable under section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

3. Briefly the case of the prosecution is that, the complainant PW-3, is the owner of 7 and 1/2 acres of land at Jalihal, Tal. Mangalwedha. One Chabubai, whom he maintained and whose marriage he arranged,

executed a gift deed in respect of her 1/6th share in land Gut No.93 on 18.06.1990 in favour of the complainant. The said gift deed was lodged for registration in the office of the Sub-Registrar, at Mangalwedha. The complainant gave the original dift deed to the accused Dhobale, who was Talathi, for effecting mutation entry in his name in the records. The said Dhobale had his office in his house, behind Tahasil Office at Mangalwedha. The said document was handed over to the accused in the presence of one Bhairu Tanaji Shembade PW-4. At that time the accused Dhobale demanaded Rs. 750/- for effecting the mutation entry. The complainant told him that the said amount was excessive. After some discussion, the amount was reduced to Rs. 500/-.

4. On 22.06.1990, complainant accompanied by one Bhairu Tanaji Shembade alongwith Jayappa Makappa More, went and met the accused at his office at Mangalwedha. The accused Talathi Dhobale, asked the complainant whether, he had brought Rs. 500/- in connection with the mutation entry. Prior to that, the complainant had enquired with the accused whether he had effected the mutation entries in the records. Accused Dhobale told him that the mutation

entries, would not be effected unless he paid Rs. 500/-. The complainant then told Dhobale, that he could make arrangement for only Rs.300/-. Whereupon, the accused agreed to accept the sum of Rs.300/- for the time being and told the complainant to bring the remaining amount of Rs. 200/- later after which the mutation entries would be effected.

5. On 21.07.1990, the complainant alongwith Changu Dhondappa Kasabe PW-6, had gone to weekly market in Nandeshwar. On seeing the complainant there, the accused called him in Chawadhi (Gram Panchayat office), and asked the complainant what has happened to Rs. 200/-. The complainant told him that he had brought only Rs. 100/-. Thereupon the accused accepted Rs. 100/- from the complainant and told him to bring the remaining amount of Rs. 100/- afterwards, when he would effect the mutation entries. Four days later i.e. on 25/07/1990 at about 8.30 a.m., the complainant went to the office of the accused at Mangalwedha and enquired whether, the mutation was effected in the records or not. Accused told the complainant that mutation will not be effected unless the balance amount of Rs. 100/- was paid to him. Complainant assured the accused

that he would bring the balance amount of Rs. 100/- the next day morning at about 8.30 a.m.. Accused Talathi told the complainant that he would be available in the office the whole of the next day. Thereafter, the complainant went to Solapur at about 12.00 noon and straight a way went to the Anti -Corruption Office and narrated his complaint to P.I.Shaikh, PW-7. Accordingly, P.I. Shaikh recorded the complaint which is at Exh.29. It was decided to lay a trap. The complainant was called to the office of PW-7 on the next dat at 4 a.m.. The complainant accordingly went there and met PW-7 -Shaikh and one constable who was present in the office. About 7 to 8 other persons were also in the office. Subsequently, two more persons entered the office. Complainant was informed that those two persons would be acting as punchas. All the necessary formalities for laying the trap were carried out. Trap money consisting of four notes of Rs.20/- each and four notes of Rs.10/- each and one note of Rs. 2/- and change of Rs. 1.75 ps. was produced, making a total amount of Rs. 123.75/-. Panchas separated Rs. 100/- out of Rs. 123.75/-. The rest of the amount i.e. Rs. 23.75/-ps. was returned to the complinant. Necessary instructions

were given to the complainant and the panchas. The complainant was instructed to give the signal on passing of the trap amount. It was arranged that the signal was to be given by moving the ball pen inside his ear. Then the trap party consisting of the complainant, panchas and police constables left for the spot i.e. office of the Talathi by Jeep.

6. The trap party alighted from the Jeep near Wadar Lane at Mangalwedha, after which the complainant and panch No.1 proceeded on foot to the house/ office of Talathi Dhobale. P.I. Shaikh alongwith Panch No.2 and raiding party members followed them at some distance. The complainant and Panch reached the office of Talathi -Dhobale at 8.15 a.m.. The accused was in the office, busy writing. Three other persons were in the office of the accused Talathi. They were from the village Khadki. Talathi Dhobale asked the complainant as to why he had come. The complainant inquired with accused Dhobale, whether he had made the mutation entry in respect of the land gifted to him. The accused Dhobale did not answer. Since there were other persons present, the accused changed the topic. The complainant then asked the accused to give him the

7/12 extracts of his land on the ground that he wanted to take a loan for purchase of cycle for his son. Accused requested the complainant to bring the printed form from Mangal Press. Accordingly, the complainant went out to get the forms, which he purchased from Mangal Press and thereafter, returned to the office of the accused. Accused Dhobale enquired as to who was the person accompanying the complainant. Complainant told the accused that he is his wife's sister's husband's that is brother in law. After the accused had completed the work for which the three other persons had come, they left. It is only thereafter, that the accused started preparing the extracts of mutation and asked the complainant whether he had arranged the money the accused had asked for. The complainant answered in the affirmative. After, finishing the extract work, the accused obtained complainant's signature on the some papers and then demanded Rs. 80/- in respect of the said extract. Complainant told the accused that he did not have that much money with him. Thereupon the accused demanded, the balance amount of Rs. 100/- which was due to be paid to him by the complainant as per prior arrangement. There upon, the complainant took out the trap money from his

right side shirt pocket and held it infront of the accused. Accused Dhobale accepted the said amount with his right hand and unfolded notes given by the complainant, and then again folded them and kept the same in his left shirt pocket. Thereupon the complainant came out of the office on the pretext of spiting and gave the pre-arranged signal by taking out his yellow ball pen and moving it inside his ear, as a signal. Thereupon the raiding party came on the scene The complainant was asked by P.S.I. Shaikh as to what had transpired. The complainant told PSI Shaikh that the accused had accepted Rs. 100/- from him. Thereupon with the aid of ultraviolet lamp, the accused was examined. Yellow bluish glaze of anthracene powder was found on the right palm of the hand of accused and his fingers as well as tips of the fingers of both his hands and on the adge of his right shirt pocket as also inside the pocket. All the events that took place pursuant to the traps, are recorded in the post trap panchanama. Panch No.1 also disclosed the events that took place in the office of the accused Talathi, the narration of which is also found in the post trap panchanama. Accused Dhobale was asked whether he had any explanation. Accused submitted

his explanation in his own hand writing and signed the same. P.I. Shaikh return to his office and submitted the complaint alongwith Yadi (list) for registration of the offence at P.S.O. Mangalwedha. P.S. registered the offence at C.R.No. 14/90 u/s. 13(2) r.w. S. 13(1)(d) of Prevention of Corruption Act, 1988. Statement of witnesses were recorded and sanction to prosecute the accused was obtained from the sanctioning authority which is at Exh. 26. The chargesheet was filed before the Special Court and the accused were introduced before the learned Special Judge. The learned Special Judge framed charges against the accused u/s. 7, 13 (2) read with S. 13(1) (d) of P.C. Act. The charges were read over and explained to the accused, who denied his guilt and claimed to be tried.

7. The prosecution had examined in all 7 witnesses, namely, PW-1 - Madhav Govind Paranjape, at Exh. 21; PW-2, Prakash Sampartao Patil, Sub Divisional Officer, who granted sanction to prosecute the accused Exh.27; PW-3 Ananda Rayappa Sabale, the complainant at Exh. 28; PW-4 Bhairu Tanaji Shembade, eye witness at Exh. 30; PW-5

Jayappa Mekappa More, witness to the demands in the office of the accused and bribe amount paid to the accused; PW-6 Shatru Dhondappa Kasabe, withess to payment of bribe amiount of Rs. 100 at Exh. 32; PW-7 Mh. Yunnus Ismail Shaikh, the Investigating Officer at Exh. 33.

8. On the conclusion of the evidence, the statement of accused under 313 was recorded. The defence of the accused is one of total denial. It is his defence that he has been falsely implicated by the complainant. The accused claims that he told the complainant that the entries could not be made without following due procedure and making necessary inquiries. The learned Advocate for the Appellant accused has challegned his conviction on various grounds, interalia, that the witnesses, who have deposed against him are all interested witnesses as they are related to the complainant and therefore, have deposed in favour of the complainant. He submitted that the accused did not accept any money from the complainant but the complainant tried to thrust the money into his pocket to get him trapped and falsely implicated in the offence of obtaining illegal gratification.

9. This is sought to be proved by way of adverse inference since the prosecution had not explained how no anthracene powder was found on the palm of the left hand of Accused. It is the defence of the accused that the money was thrust into his pocket by the complainant and this defence is sought to be bolstered on the failure of the prosecution to explain why anthracene powder is not found on palm of the left hand of the accused although it is the case of the prosecution that when the complainant handed over the money to the accused, he accepted the money with his right hand and then unfolded the wad of notes, with both his hands and thereafter, again folded the notes with both his hands and then put the money into his left side shirt pocket. According to the defence, if this is the story of how the accused accepted the money, then the anthracene powder ought to have also come on to the left hand of the accused but this has not happened and therefore, the prosecution case, that the accued accpeted the money with his right hand, unfolded the notes and thereafter folded the same and then put them into his pocket does not seem probable. The absence of anthracene powder on the left hand of the

accused has remained unexplained.

10. However, it is to be noted that neither the complainant nor panch PW-1, have stated that the accused used both his hands for unfolding and again folding the notes. Reference to this is only to be found in the panchanama at page- 55, where it is stated that the accused used both his hands. It is pertinent to note that Panch- PW-1 himself has not stated that the accused used both his hands. This omission has not been proved in the cross-examination of Panch PW-3. Even otherwise, the defence theory that the complainant tried to thrust the money on the accused appears highly improbable since, if there was an attempt to thrust money into the pocket of the accused antracene powder would have come on to the dorsal aspect of the left hand of the accused as he was covering his shirt pocket with his left hand, as stated by him in his 313 statement as well as by the defence witness No.1. It may be noted that the anthracene powder was found on the opening of the shirt pocket, clearly because the money was put by the accused into his left side shirt pocket. But if the money was thrust into his pocket when the accused had his hand covering the

shirt pocket then obviously the back of the hand of the accused would have got sprinkled with the anthracene powder. The defence of the accused that the money was planted on the accused, is without merit.

11. The defence of the accused that he has been falsely implicated by the complainant because the complainant had a grudge against him for not having done his work and raising objections, is also without merit. It must be remembered that the complainant had gone to the accused who was the Talathi for effecting mutation entries in his name in the records in respect of the property gifted to him. It was within the power and infact the duty of the accused to have effected the mutation entries on the application being made without unnecessary delay. The first time, the complainant went to the accused to get the mutation entries carried out in respect of the gift deed dated 11.6.1990 was on 18.6.1990, when the accused made a demand for Rs. 750/- for effecting mutation entry, which he reduced to Rs. 500/-. The said amount was after much discussion reduced to Rs. 500/-. Thereafter, again on 26.6.1990, the complainant alongwith Jahyappa

More, Bhairu Tanaji Shembade -PW-4 met the accused Dhobale in his office, when the complainant, on enquiry made by the accused, told the accused that he had brought Rs.300/-, which the accused accepted but with a reminder to the complainant to bring the balance amount of Rs. 200/-. The receipt of payment of Rs. 300/- is corroborated by the evidence of Bhairu Tajani Shembade PW-4. Thereafter on 21.7.1990 when the complainant had gone to the weekly market at Nandeshwar, the accused who was in his jeep, called him and enquired as to what has happened about balance amount of Rs. 200/-. The complainant told him that he did not have Rs. 200/- but only Rs. 100/- and accordingly, accused took Rs. 100/- from the complainant and told him to bring the remaining Rs. 100/-. He also told him that on the receipt of the balance amount, the mutation entries will be effected. At that time, the complainant was accompanied by Chatru Dhondappa Kasbe PW-6, who had been for weekly market on 21.7.1990. Thereafter on 25th July, 1990 at about 8.00 a.m., the complainant again went to the office of Talathi Dhobale to make enquiries about 7 /12 extract and the accused clearly told him that the said entries would not be effected unless balance of

Rs. 100/- is paid. Complainant told him that he would bring the amount of Rs. 100/-on the next day. Thereafter, the complainant went to the office of the Anti-Corruption at Solapur and lodged his complaint. On this visit of the complainant to the office of Anti corruption, he lodges the complaint against the accused and narrated the demand of accused to Investigating Officer, P.I. Shaikh, who recorded his complaint. The visit of the complainant to the office of the accused on 25th July, 1990 is thus established. On the date of the trap, the accused accepted the balance amount of Rs. 100/- which is proved by the evidence of the complainant as well as that of panch PW-1, who accompanied the complainant to the office of the Talathi Dhobale and in whose presence the events recorded in the post trap panchanama, took place.

12. The accused in support of his defence that the money was thrust into his pocket, has examined one witness by name Madhu Savale Aiwale, who has stated that he saw one person sitting in the chair forcibly inserting money in the left side shirt pocket of the accused. The accused had held the right hand of the person, who was trying to insert

the money with the help of his right hand into the shirt pocket of the accused. The evidence of this witness has been rightly rejected by the trial court on the ground that he is an interested witness, being a close relative of the accused and further that his cross examination clearly brings out the fact that he is a got-up witness.

13. The learned trial Judge, on the basis of the evidence of the complainant, corroborated by eye witnesses, has concluded that the accused is guilty of having demanded bribe amounts on various dates, as mentioned above. It is the contention of the defence that the witnesses who have corroborated the complainant are also interested witness. It is pointed out that PW-4 is related to the complainant while PW-5 and 6 are from the same village as the complainant and therefore, they have falsely deposed in favour of the complainant. Even assuming it to be so, merely being related to the complainant does not make the witness an interested witness unless an attempt to falsely implicate the accused, is brought out in the cross- examination of the said witnesses. Nothing has been brought on record to show that the witnesses are deposing falsely. The cross

examination of these witnesss has not shaken either their credibility or their testimony and therefore, the testimony of the complainant corroborated by the evidence of these witnesses, who were present at different times along with the complainant when the demands for bribe were made, has to be accepted. The charges against the accused stood proved. The trial court has rightly convicted the accused of the offences with which he is charged. The trial court has passed a reasoned order. There is no infirmity or perversity in the said order. I see no reason to interefere with the same. Hence, Appeal rejected and disposed of.

14. I have heard the learned Advocate for the applicant/ accused on the question of sentence. The learned Advocate has submitted that the Appellant is now a senior citizen over 60 years of age. He has a large family. He has lost his job on account of his conviction. He will now be sent to prison, after lapse of a period of 14 years and considering his age and condition of his health, the court should show some leniency. It may be noted that the accused was arrested and released immediately on bail. He has not, therefore, spent a single day in

prison. It is also noted that the trial court has sentenced him to suffer imprisonment for three years on the first count and two years on the second count. There is no direction by the trial court that the sentences should run concurrently and therefore, the sentences will have to run consequently. The appellant accused would be subjected to sentence to five years imprisonment in all. In view of the fact that the applicant will be taken into custody after a period of 14 years and considering his age and state of his health, the interest of justice would be served if both the periods of sentence are directed to run concurrently. Hence, the following order :-

ORDER

i. Appeal is rejected and disposed of.

ii. The sentences of imprisonment in respect of both the offences are directed to run concurrently. The period of sentence is reduced to two years in all. The Applicant/ accused is directed to surrender to his bail bond within two weeks.

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